

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RODNEY EUGENE STARCHER,

Plaintiff,

VS.

STEVE STEGER, O.D., *et al*,

Defendants.

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CIVIL ACTION NO. C-09-154

**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR LEAVE
TO AMEND COMPLAINT**

Pending is plaintiff's motion for leave to amend his complaint to add Dr. William Burgin as a defendant (D.E. 22). Leave to amend shall be freely granted, FED. R. CIV. P. 15(a), unless amendment would be futile. Jebaco, Inc., v. Harrah's Operating Co., Inc., 587 F.3d 314, 322 (5th Cir. 2009). In plaintiff's allegations, he claims that Dr. Burgin was responsible for supervising the defendants who are in the case and had knowledge of their unconstitutional acts. Dr. Burgin is not an eye doctor and had no personal involvement in plaintiff's case except to respond to plaintiff's grievance. Dr. Burgin cannot be held liable on theory of supervisory liability, or *respondeat superior*. Rios v. City of Del Rio, Texas, 444 F.3d 417, 425 (5th Cir. 2006). The amendment would be futile, and leave to amend (D.E. 22) is denied.

ORDERED this 28th day of January, 2010.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE